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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:) Docket No. 5-CAA-97-012
)
Chem-Rex, Inc.) Proceeding to Assess
Mattawan, Michigan) Administrative Penalty
) under Section 113(d) of the
) Clean Air Act,
Respondent.) 42 U.S.C. §7413(d)
)
)

CONSENT AGREEMENT AND CONSENT ORDER

WHEREAS, Complainant, the Director, Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA or EPA"), Region 5, and Respondent, Chem-Rex, Inc. ("Respondent" or "Chem-Rex"), the Parties herein, wishing to settle all matters pertaining to this case; and

WHEREAS, the Parties have consented to the entry of this Consent Agreement and Consent Order ("CACO"); NOW, THEREFORE, before the taking of any testimony, without an adjudication of any issues of law or fact herein, or an admission of liability or of any specific question of fact or law by Respondent, the Parties consent to the entry of, and agree to comply with the terms of, this CACO.

I. Preliminary Statement

1. EPA instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 113(d), by issuing an Administrative Complaint and Notice of Proposed Order Assessing a Penalty against Respondent on June 30, 1998 ("Administrative Complaint").

2. Section 109 of the Act, 42 U.S.C. §7409, required the Administrator of EPA to publish National Ambient Air Quality Standards for several pollutants, including ozone.

3. In order to achieve the standards for ozone, Section 110 of the Act, 42 U.S.C. §7410, requires each State to submit a plan (the State Implementation Plan or "SIP") to the Administrator of EPA for attaining and maintaining the National Ambient Air Quality Standards.

4. On September 7, 1994, EPA approved Michigan Air Pollution Control Commission Rule R336.1702 (Michigan SIP Rule 702) which became part of the federally enforceable and applicable implementation plan for the State of Michigan at 59 FR 46182.

5. On May 6, 1980, EPA approved Michigan Air Pollution Control Commission Rule R336.1201(1) (Michigan SIP Rule 201) which requires a person to obtain a Permit to Install ("PTI") prior to installing any process which may be a source of an air contaminant. Michigan SIP Rule 210 became part of the federally enforceable and applicable implementation plan for the State of Michigan at 45 FR 29801.

6. Respondent owns and operates two adhesive production lines identified as the PL process and the Meyers process at its facility located at 23930 Concord, Mattawan, Michigan.

7. On June 23, 1981, pursuant to Michigan SIP Rule 201, the State of Michigan issued PTI number 61-81 to Respondent's predecessor for the installation of the PL process. Chem-Rex subsequently purchased the facility and therefore became subject to the terms of PTI number 61-81.

8. On April 6, 1993, pursuant to Michigan SIP Rule 201, the State of Michigan issued PTI number 9-93 to Respondent for the installation of the Meyers process.

9. The Administrative Complaint, which is fully incorporated herein by reference, alleged that Respondent violated the requirements of the PTIs, and therefore violated the requirements of the SIP, with respect to limits on emission of volatile organic compounds ("VOCs"), which are precursors to ozone.

10. The Complaint proposed that Respondent be assessed a civil penalty of \$127,642, calculated in accordance with Section 113(e) of the Act, and the "Clean Air Act Stationary Source Civil Penalty Policy" (October 25, 1991) ("Penalty Policy").

11. EPA and Chem-Rex have entered into this CACO as a means of compromising, settling and resolving all civil questions, issues, duties, obligations and responsibilities among them, related to the incidents referenced in the Administrative Complaint, without incurring the expense, inconvenience and uncertainty of continued or protracted litigation, and this CACO is issued to conclude the administrative penalty matter initiated by the EPA Administrative Complaint.

II. General Terms of Settlement

12. Respondent enters into this CACO solely for the purpose of settling this matter and does not admit any liability for the claims set forth in the Administrative Complaint. Respondent admits that EPA has jurisdiction over the matter. Respondent and Complainant agree that settlement of this action is in the best interests of the Parties and in the public interest, and consent to the terms of this CACO as set forth herein.

13. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Administrative Complaint or this CACO, and waives any and all rights to appeal this settlement and/or CACO.

14. Respondent certifies that it has submitted an application for amendment to its PTI that would achieve compliance with the requirements of the Michigan SIP and remedy the alleged violations at issue.

15. Upon receipt of the Administrative Complaint, Respondent cooperated with EPA to resolve the matters covered by this CACO, and has shown good faith and cooperation in settling this matter.

16. Pursuant to Section 113(e) of the Act, and based upon the foregoing, the nature of the violations alleged in the Administrative Complaint, information exchanged by the parties, information on Respondent's actual emissions, production rates and days of operation, consideration of the steps Respondent took to ensure compliance, Respondent's agreement to perform the

Supplemental Environmental Projects ("SEP") set forth herein, and other relevant factors, EPA has determined that an appropriate civil penalty to resolve this action is in the amount of \$42,000, and Complainant herein accordingly mitigates the proposed penalty amount, and Respondent is hereby assessed a civil penalty in the amount of \$42,000.

17. Respondent agrees to the assessment of a civil penalty in the amount of \$42,000, as provided in this CACO.

18. Respondent further agrees to perform the SEP as described below in Section IV of this CACO.

III. Penalty Payment

19. Respondent shall pay the civil penalty by forwarding a cashier's or certified check within thirty (30) calendar days of the date a copy of the fully executed CACO is filed with the Regional Hearing Clerk by EPA. The check shall be made payable to the order of the "Treasurer of the United States of America" in the amount of \$42,000, and mailed to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

The check shall bear the case docket number "5-CAA-98-012" and "BD # _____."

20. A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (MF-19J)
Chicago, Illinois 60604;
- b) Farro Assadi
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604; and
- c) Thomas Krueger
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604.

21. Respondent's failure to timely pay any part of the civil penalty due under this CACO may result in the referral of this matter to the United States Department of Justice for collection of the penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413 (d)(5).

22. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. §§ 3717, 3731, Respondent shall be liable for interest, penalties, and handling charges for failure to make any payments required by this CACO on a timely basis, and shall be liable for the United States' enforcement and collection arising from Respondent's failure to make full and timely payments.

IV. Supplemental Environmental Projects

23. Chem-Rex agrees to install and operate a vapor recovery system to reduce VOC emissions from its PL process equipment.

SEP Schedule

24. Chem-Rex shall:

- A. Begin taking steps toward installation of the vapor recovery system described in Attachment A to this CACO within 30 days after the effective date of this CACO.

- B. Complete the installation of the vapor recovery system within 120 days after the effective date of this CACO.
- C. Include the operation of the vapor recovery system in any subsequent permit applications for the PL process equipment and operate the vapor recovery for a minimum of five years, subject to the provisions of paragraph 32.E.
- D. Report project results to U.S. EPA within 200 days after the effective date of this CACO.

25. Chem-Rex estimates that this SEP project will cost \$24,700. Chem-Rex also estimates that this project would result in up to 17,474 pounds per year of VOC reduction at the facility.

26. Respondent hereby certifies that as of the date of this CACO it is not required to perform or develop the SEP by any Federal, State or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

27. Respondent shall submit a SEP Completion Report to EPA within 200 days of the effective date of this CACO. The SEP Completion Report shall contain the following information:

- A. A description of the SEP as implemented;
- B. A discussion of any significant problems encountered and the solutions thereto;
- C. Itemized costs, documented by copies of purchase orders, invoices, receipts, canceled checks, or other appropriate documents;

D. A description of the environmental and public health benefits that will or may result from implementation of the SEP.

E. The certification from the paragraph below.

28. Respondent shall maintain legible copies of documentation of the underlying information and data for any and all documents or reports submitted to EPA pursuant to this CACO, and Respondent shall provide the documentation of any such underlying information and data to EPA within seven (7) business days of receiving a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CACO, the Environmental Manager for the Respondent's facility shall sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

29. Following receipt of the SEP completion report described above, EPA will either:

(A) accept the SEP completion report;

(B) reject the SEP completion report, in which case EPA shall notify the Respondent in writing of deficiencies in the SEP completion report and grant Respondent an additional thirty (30) days in which to correct any deficiencies in the SEP and/or SEP completion report prior to seeking stipulated penalties in accordance with the provisions of this CACO.

If EPA elects to exercise option (B) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its final decision to Respondent, in which EPA may accept the SEP completion report, or reject the SEP completion report and seek stipulated penalties in accordance with the provisions of this CACO. Respondent agrees to comply with any reasonable requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this CACO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with the terms set forth below.

30. In any statement to the public by Respondent (whether oral or written, in print, film, or other media) making reference to the SEP, Respondent shall include the following language:

This project was undertaken voluntarily in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act.

31. Respondent agrees that EPA may inspect upon reasonable notice, the area where the SEP is being implemented in order to

confirm that the SEP is being undertaken in conformity with the representations made herein and in the SEP completion report.

32. In the event that Respondent fails to comply with any of the terms or provisions of this CACO relating to the performance of the SEP described above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph B., immediately below, if the SEP is not completed satisfactorily pursuant to this CACO, Respondent shall pay a stipulated penalty to the United States in the amount of \$9,600 for such failure. However, if EPA determines that: a) the Respondent has made a good faith, timely effort to implement the SEP; and b) that Respondent has certified, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; a stipulated penalty shall not be assessed.

B. If the SEP is satisfactorily completed, but the Respondent spent less than 90 percent of the amount of money estimated to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between the amount expended and \$24,700, the estimated cost of the SEP.

C. For failure to timely complete the SEP, as set forth in Paragraph 21, Respondent shall pay a stipulated penalty in the amount of \$25 for each late day until the SEP is completed.

D. For failure to submit the SEP completion report required above, Respondent shall pay a stipulated penalty in the amount of \$25 for each late day until the report is submitted.

E. For failure to operate and maintain the SEP for a minimum of five years, Respondent shall pay a stipulated penalty in the amount of \$1000 for each month of such shortfall, except that no such stipulated penalty shall be due if EPA determines that the facility will obtain equivalent vapor emission reductions through other means. EPA will not unreasonably withhold such a determination.

F. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA, which discretion shall be exercised in a reasonable manner under the circumstances.

G. Stipulated penalties relating to the performance of, or expenditures on the SEP described above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

H. Respondent shall pay such stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be, and interest and late charges shall be paid, in accordance with the penalty payment provisions set forth above.

V. General Provisions

33. Entry of this CACO, and Respondent's compliance herewith, shall constitute full accord, satisfaction and settlement of all civil liability of Respondent arising out of the causes of action alleged in the Administrative Complaint.

34. By entering into this CACO and complying with its terms, Respondent does not admit any particular fact, statement, legal conclusion, liability or past or present violation of any law or regulation, and this CACO shall not be interpreted as including such admission.

35. Except as provided in Paragraph 30, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision

of law, provided, however, that any applicable stipulated penalties paid under this CACO shall be credited against any civil penalty assessed for Respondent's violation of this CACO.

36. The penalty specified in Paragraph 17 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

37. Nothing in this CACO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other Federal, State or local laws or statutes.

38. Nothing in this CACO shall be construed to be a ruling on, or determination of, any issue related to any Federal, State or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this Agreement.

39. Respondent shall submit all notices and reports required by this CACO by first class mail to:

Farro Assadi
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604

40. This CACO shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this CACO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

41. If an event beyond the control of Respondent, including failure by the Michigan Department of Environmental Quality to

issue any required permit(s) for the SEP, occurs which causes a delay in any of Respondent's duties under this CACO, Respondent shall promptly notify EPA by telephone, and shall within seven (7) days of becoming aware of such event, notify EPA in writing of the delay, the anticipated length of the delay, the cause of the delay, the measures taken by Respondent to prevent or minimize the delay, and the timetable by which Respondent agrees to complete the delayed duties. If EPA agrees that the delay is caused by circumstances beyond the control of Respondent, the time for performance of the affected duties hereunder will be extended for a reasonable period. EPA will not unreasonably withhold such agreement.

42. Each party shall bear its own costs, attorney fees and disbursements in this action.

43. Respondent may consider some of the information it submits to the EPA as confidential. Respondent may assert a business confidentiality claim covering part or all of the information provided, in the manner described by 40 C.F.R.

2.203(b). Information covered by such a claim will be disclosed by the EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1985).) If no such claim accompanies the information when the EPA receives it, the information may be made available to the public by the Agency without further notice to you.

If Respondent wishes the EPA to treat the information as "confidential", Respondent must advise the EPA of that fact by following the procedures described below, including the requirement for supporting the claim of confidentiality. To assert a claim of confidentiality, Respondent must specify which portions of the information or documents is considered confidential by page, paragraph, and sentence. Respondent must make a separate assertion of confidentiality for each document that it considers confidential. Respondent shall submit the portion of the response that it considers confidential in a separate, sealed envelope marked "confidential".

For each assertion of confidentiality, identify:

- a. The period of time for which Respondent requests that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
- b. The measures that Respondent has taken to guard against disclosure of the information to others;
- c. The extent to which the information has already been disclosed to others and the precautions that Respondent has taken to ensure that no further disclosure occurs;
- d. Whether the EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination;

- e. Whether disclosure of the information or document would be likely to result in substantial harmful effects to Respondent's competitive position. If Respondent's believes such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;
- f. Whether Respondent asserts that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(I). If Respondent makes this assertion, explain how the disclosure would tend to lessen the ability of the EPA to obtain similar information in the future;
- g. Any other information that Respondent deems relevant to a determination of confidentiality.

Pursuant to 40 C.F.R. 2.208(e), the burden of substantiating confidentiality rests with Respondent. The EPA will give little or no weight to conclusory allegations. If Respondent believes that facts and documents necessary to substantiate confidentiality are themselves confidential, Respondent shall identify them as such so that the EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If Respondent does not identify this information and documents as "confidential", Respondent's comments will be available to the public without further notice.

44. This CACO constitutes the entire agreement between the parties.

45. Respondent and EPA agree to issuance of the accompanying Consent Order.

46. This CACO will be binding on the parties and in full effect upon the filing of this CACO with the Regional Hearing Clerk and will be completed upon payments of all moneys due and owed under its terms, and U.S. EPA's approval of the SEP completion report.

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

**U.S. ENVIRONMENTAL PROTECTION
AGENCY, COMPLAINANT**

Date: 2/16/99

By: 

Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Chem-Rex, Inc.,
RESPONDENT

Date: 1/28/99

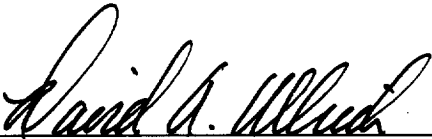
By: Mark L. McClelland

Consent Agreement and Consent Order
Chem-Rex, Inc.
Docket No. 5-CAA-98-012

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon filing of this Consent Agreement and Consent Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

Dated: February 17, 1999



David A. Ullrich
Acting Regional Administrator
Region 5
U.S. Environmental Protection
Agency

CERTIFICATE OF SERVICE

I hereby certify that the Original of the attached Consent Agreement and Consent Order was filed with the Regional Hearing Clerk, and that true and accurate copies were caused to be mailed to:

Office of Administrative Law Judges
U.S. Environmental Protection Agency
401 M Street, S.W. (A-110)
Washington, D.C. 20460

Mark McClendon
Chem-Rex, Inc.
889 Valley Park Drive
Shakopee, Minnesota 55379

Todd R. Wiener
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

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CERTIFIED MAIL NUMBER

P401181068

Dated: 2/23/99

Shanee Rucker
Shanee Rucker, Secretary
Air and Radiation Division
United States Environmental
Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604
(312) 886-6086